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PREPARATORY COMMITTEE ON THE ESTABLISHMENT
OF AN INTERNATIONAL CRIMINAL COURT
12-30 August 1996

DRAFT REPORT OF THE PREPARATORY COMMITTEE

Rapporteur: Mr. Yun YOSHIDA (Japan)

III. FURTHER DISCUSSION OF THE MAJOR SUBSTANTIVE AND ADMINISTRATIVE ISSUES ARISING OUT OF THE DRAFT STATUTE FOR AN INTERNATIONAL CRIMINAL COURT PREPARED BY THE INTERNATIONAL LAW COMMISSION, AND, TAKING INTO ACCOUNT THE DIFFERENT VIEWS EXPRESSED DURING THE MEETINGS, DRAFTING OF TEXTS, WITH A VIEW TO PREPARING A WIDELY ACCEPTABLE CONSOLIDATED TEXT OF A CONVENTION FOR AN INTERNATIONAL CRIMINAL COURT AS A NEXT STEP TOWARDS CONSIDERATION BY A CONFERENCE OF PLENIPOTENTIARIES

Additional new proposals pertaining to topics discussed during the March-April session

Note: The new proposals introduced at the August session pertaining to topics discussed during the March-April session will be incorporated in the relevant sections of the summary of the proceedings of the Preparatory Committee (A/AC.249/1).

Definition of crimes 1/

Attention was drawn to the definitions of crimes contained in articles 17 to 20 of the draft Code of Crimes Against the Peace and Security of Mankind, adopted by the International Law Commission in 1996, with a view to considering the inclusion of such definitions in the statute. Article 20 of the statute should be reformulated along the lines of the draft Code with each crime being defined in a separate article identifying the essential elements of the offences and the minimum qualitative and quantitative requirements. The definition of

war crimes should clearly indicate in what circumstances, by which perpetrators and against which victims certain acts would constitute such crimes.

Complementarity 2/

The principle of complementarity should be defined as an element of the competence of the Court; the conditions, timing and procedures for invoking this principle should be clearly indicated; the person named in the submission to the Court or the State party invoking this principle should provide supporting information; the Court could hold a hearing before reaching a decision; the Prosecutor should be able to obtain protective measures to preserve evidence or to detain suspects pending the Court's decision; the person named in the request for transfer or the State requested to transfer an accused should be able to invoke the principle for the first time before the trial.

Consideration should be given to how the complementarity regime would take account of national reconciliation initiatives entailing legitimate offers of amnesty or internationally structured peace processes.

The Security Council: article 23 2/

It was suggested that the effective functioning of the Court could be enhanced without interfering with the primary responsibility of the Security Council for the maintenance of international peace and security by allowing the Court to investigate or prosecute a case unless the Security Council directs otherwise.

Final clauses 3/

It was suggested that the final clauses should provide a transitional arrangement for the transfer of cases from the ad hoc tribunals to the Court to avoid concurrent or parallel jurisdiction. However, attention was drawn to the differences in the temporal jurisdiction of the ad hoc tribunals and the Court which obviated the need for such an arrangement.

Notes

1/ This section will be added to chapter III.A, entitled "Scope of jurisdiction and definition of crimes", of document A/AC.249/1.

2/ This section will be added to chapter III.C, entitled "Complementarity", of document A/AC.249/1.

3/ This section will appear under the heading "Final clauses".